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INTERSTATE COMMERCE COMMISSION

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# Assignment of Lease and Agreement

Dated as of December 15, 1974

BETWEEN

FIRST NATIONAL BANK OF LOUISVILLE,

*as Owner Trustee*

AND

THE DETROIT BANK AND TRUST COMPANY,

*as Security Trustee*

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THIS ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 15, 1974 between First National Bank of Louisville, as Trustee (hereinafter, together with its successors and assigns, called "Owner Trustee") under a Trust Agreement dated as of the date hereof with American Fletcher Leasing Corporation, First Illinois Leasing Corporation and Trans Union Leasing Corporation (hereinafter called collectively "Owner"), and The Detroit Bank and Trust Company, as Trustee (hereinafter, together with its successors and assigns, called "Security Trustee") under a Security Agreement dated as of the date hereof (hereinafter called the "Security Agreement").

WITNESSETH:

Owner Trustee, Owner, Security Trustee, The Detroit Edison Company (hereinafter called "Lessee") and the loan participants named in Appendix I thereto (hereinafter called the "Loan Participants") have entered into a Finance Agreement dated as of the date hereof (hereinafter called the "Finance Agreement") providing for the several commitments of Owner and the Loan Participants in Owner's Cost (as therein defined) of the units of used standard-gauge railroad equipment (other than any unit which shall have suffered a Casualty Occurrence, as defined in the Lease referred to below, prior to the Closing Date, as defined in the Finance Agreement), which units (hereinafter called the "Units") are more particularly described in Annex A to the Lease. The commitments of the Loan Participants are to be evidenced by Owner Trustee's 12 $\frac{7}{8}$ % Equipment Trust Notes (hereinafter called the "Notes") issued under and secured by the Security Agreement.

Concurrently with the execution and delivery of this Assignment, Owner Trustee and Lessee are entering into a lease of railroad equipment dated as of the date hereof (hereinafter called the "Lease"), in substantially the form of Exhibit C to the Finance Agreement, pursuant to which Owner Trustee will lease the Units to Lessee.

NOW, THEREFORE, THIS ASSIGNMENT OF LEASE AND AGREEMENT WITNESSETH That, in consideration of the sum of One Dollar and other good and valuable consideration paid by Security Trustee to Owner Trustee, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

SECTION 1. Owner Trustee hereby assigns, transfers and sets over unto Security Trustee, its successors and assigns (i) all Owner Trustee's right, title and interest as lessor under the Lease, together with all rights, powers, privileges and other benefits of Owner Trustee as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals and other sums payable to or receivable by Owner Trustee under or pursuant to the provisions of the Lease, whether as rent, casualty payment, termination payment, indemnity, liquidated damages or otherwise (other than payments due Owner Trustee or Owner pursuant to Sections 6, 7 (with respect to public liability insurance), 10, 17 and 21, which shall be made directly to Owner Trustee or Owner, respectively) (such moneys being hereinafter called the "Payments"), it being expressly understood and agreed by Security Trustee that such assignment of the Payments shall not thereby increase the amount of funds applicable to the payment or prepayment of the Notes or interest or premium thereon as provided in Section 2.06 of the Security Agreement; and (ii) the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to do any and all other things whatsoever which Owner Trustee as lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment and transfer, Owner Trustee hereby authorizes and empowers Security Trustee to ask, demand, sue for, collect, receive and enforce any and all sums to which Security Trustee is or may become entitled under this Assignment and compliance by Lessee with the terms and agreements on its part to be performed under the Lease. So long as an Event of Default under the Lease or Security Agreement has not occurred and is not then continuing, Security Trustee will not exercise or enforce, or seek to exercise or enforce, or avail itself of any of the rights, powers, privileges, authorities or benefits hereby assigned, except the right to receive and apply the Payments as provided in Article IV of the Security Agreement, the right to give the requisite notice in case of the occurrence of a Default under the Lease or the Security Agreement and the right to recover directly from Lessee amounts owing under the Lease directly to Security Trustee and/or the Noteholders. Nothing in this Assignment shall be construed to prohibit Owner Trustee or Owner from: (w) proceeding directly against Lessee for payments due Owner Trustee or Owner for indemnification pursuant to Sections 6, 10 and 17 of the Lease or for payments due Owner pursuant to Section 21 of the Lease, (x) proceeding directly against any insurer with respect to the public liability insurance to be maintained by Lessee pursuant to Section 7 of the Lease, (y) proceeding directly against Lessee for specific performance

of Lessee's covenants to maintain insurance pursuant to such Section 7 or to maintain the Units in the manner required by such Section 10 or (z) proceeding directly against Lessee for damages resulting from any decrease in or delay in payment of Basic Rent (as defined in the Lease) contrary to Lessee's undertaking in Section 25 of the Lease or for specific performance of Lessee's undertaking in such Section 25.

Security Trustee agrees to accept any Payments made by Lessee for the account of Owner Trustee as lessor pursuant to the Lease. To the extent received, Security Trustee will apply such Payments to satisfy the obligations of Owner Trustee under the Security Agreement, subject to the limitations contained in Section 2.06 of the Security Agreement, and any balance shall be paid in immediately available funds by wire transfer to each Owner in accordance with written instructions by Owner Trustee, unless and until Owner Trustee shall otherwise direct Security Trustee in writing. If Security Trustee shall not receive any rental payment under the first or third paragraph of Section 3 of the Lease when due, Security Trustee shall notify Owner Trustee at the address set forth in the Lease.

SECTION 2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject Security Trustee to, or transfer, or pass, or in any way affect or modify, the liability of Owner Trustee under the Lease, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment, all obligations of Owner Trustee to Lessee shall be and remain enforceable by Lessee only against Owner Trustee or persons other than Security Trustee.

SECTION 3. To protect the security afforded by this Assignment, Owner Trustee further agrees as follows:

(a) Owner Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by Owner Trustee; and, without the express written consent of Security Trustee, Owner Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by Lessee, including, without limitation, the obligation to pay the rents in the manner and at the times and place specified therein, or enter into any agreement amending, modifying or terminating the Lease; and Owner Trustee agrees that any amendment, modification or termination thereof without such consent shall be void;

(b) at Owner Trustee's sole cost and expense (subject to Sections 2.06 and 13.01 of the Security Agreement), Owner Trustee will appear in and defend every action or proceeding arising under, growing out

of or in any manner connected with the obligations, duties or liabilities of Owner Trustee under the Lease if such action or proceeding shall arise out of the wilful misconduct or gross negligence of Owner Trustee; and

(c) should Owner Trustee fail to make any payment or to do any act which this Assignment requires Owner Trustee to make or do, then Security Trustee may (but shall not be obligated), after first making written demand upon Owner Trustee and affording Owner Trustee a reasonable period of time within which to make such payment or do such act, and without releasing Owner Trustee from any obligation hereunder or under the Lease, make such payment or do such act in such manner and to such extent as Security Trustee may deem necessary to protect the security hereof, including, without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Security Trustee and also the right to perform and discharge each and every obligation, covenant and agreement of Owner Trustee contained in the Lease. In exercising any such powers, Security Trustee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and Owner Trustee will reimburse Security Trustee for such costs, expenses and fees out of the Trust Estate (as defined in the Security Agreement).

SECTION 4. Upon the full discharge and satisfaction of all Owner Trustee's obligations under the Security Agreement, this Assignment and all rights herein assigned to Security Trustee shall terminate, and all estate, right, title and interest of Security Trustee in and to the Lease shall revert to Owner Trustee.

SECTION 5. Owner Trustee represents and warrants that (a) the Trust Agreement, the Security Agreement, the Lease and this Assignment have each been duly authorized, executed and delivered by Owner Trustee and each is and will remain the valid and binding obligation of Owner Trustee Enforceable (as defined in the Security Agreement) in accordance with its respective terms; (b) Owner Trustee has not executed any other assignment of the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, charges, security interests or other encumbrances (except the Security Agreement and this Assignment) created or suffered by any act or omission on the part of Owner Trustee (other than any act or omission in respect of which Lessee has assumed responsibility under the Lease); and Owner Trustee has not received any advance rental payments (except the rental payment described in the first paragraph of Section 3) under the Lease; and (c) to the actual knowledge of Owner Trustee, it has performed all obligations on its

part to be performed under the Lease on or prior to the date hereof and there has not occurred on or prior to the date hereof any Default or Event of Default as defined in the Lease.

SECTION 6. Owner Trustee agrees with Security Trustee that in any suit, proceeding or action brought by Security Trustee under the Lease for any installment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, Owner Trustee will indemnify, protect and hold harmless Security Trustee out of the Trust Estate from and against all expense (including without limitation counsel fees), loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever claimed by Lessee arising out of a breach by Owner Trustee of any obligation under the Lease or arising by reason of any other indebtedness or liability at any time owing to Lessee from Owner Trustee. Any and all such obligations shall be and remain enforceable against and only against Owner Trustee and shall not be enforceable against Security Trustee or any person or persons in whom any of the rights of Owner Trustee under the Lease shall vest by reason of this assignment or of successive assignments or transfers.

SECTION 7. Security Trustee may assign all or any of its rights under the Lease, including the right to receive any Payments due or to become due thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving by Security Trustee of written notice of such assignment to Owner Trustee and by Owner Trustee of the written notice required in Section 13 of the Lease, enjoy all the rights and privileges and be subject to all the obligations of Security Trustee hereunder.

SECTION 8. Owner Trustee hereby agrees that it will from time to time and at all times, at the request of Security Trustee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Security Trustee or intended so to be, including the execution and acknowledgment of any instrument necessary or appropriate to file, record, register or deposit this Assignment or notice hereof.

SECTION 9. Owner Trustee shall cause copies of all notices received in connection with the Lease to be promptly delivered to Security Trustee at

its address set forth in Section 14.04 of the Security Agreement, or at such other address as Security Trustee shall designate in writing. Security Trustee shall give immediate notice by telegram, promptly confirmed in writing, to Owner Trustee and Owner at the addresses set forth in Section 19 of the Lease of any default by Lessee described in clause (A) of Section 11 of the Lease and of any other default by Lessee described in such Section 11 of which Security Trustee has actual knowledge.

SECTION 10. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of the Lease or this Assignment as shall be conferred by the laws of the several jurisdictions in which the Lease or this Assignment shall be filed, recorded, registered or deposited.

SECTION 11. It is expressly understood and agreed by and between Owner Trustee, Security Trustee and the holders of the Notes from time to time outstanding that this Assignment is executed by First National Bank of Louisville, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and First National Bank of Louisville hereby warrants that it possesses full power and authority to enter into and perform this Assignment); it is further understood and agreed that, except as otherwise expressly provided herein or in the Finance Agreement and except in the case of gross negligence or wilful misconduct of Owner Trustee for which Owner Trustee alone shall be liable, nothing herein contained shall be construed as creating any liability on First National Bank of Louisville individually or personally or Owner to perform any covenant contained herein, all such liability being expressly waived by Security Trustee and the holders of the Notes; and so far as First National Bank of Louisville or Owner is concerned, Security Trustee and the holders of the Notes shall look solely to the Trust Estate for payment of the indebtedness evidenced by the Notes and the performance of the other obligations herein.

SECTION 12. This Assignment may be executed in any number of counterparts, but the counterpart delivered to Security Trustee shall be deemed to be the original counterpart. Although this Assignment is dated as of December 15, 1974 for convenience, the actual date or dates of execution

hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FIRST NATIONAL BANK OF LOUISVILLE,  
as Owner Trustee

(CORPORATE SEAL)

By *Denise W. White*  
Vice President and Trust Officer

Attest:

*A. Jackson*  
Trust Officer

THE DETROIT BANK AND TRUST COMPANY,  
as Security Trustee

(CORPORATE SEAL)

By *Wm. J. Scott*  
Vice President

Attest:

*A. J. Carey*  
Trust Officer



STATE OF KENTUCKY }  
COUNTY OF JEFFERSON } SS

On this ~~26TH~~ day of December, 1974, before me personally appeared ~~DENNIS W. WEINE~~, to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of First National Bank of Louisville, that one of the seals affixed to the foregoing instrument is the corporate seal of said association and that said instrument was signed and sealed on behalf of said association by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

*Ruth B. Mahagan*  
Notary Public

(NOTARIAL SEAL)

My Commission Expires *Dec. 14, 1975*

STATE OF MICHIGAN }  
COUNTY OF WAYNE } SS

On this ~~23rd~~ day of December, 1974, before me personally appeared ~~HARRY C. PRATT~~, to me personally known, who, being by me duly sworn, says that he is a Vice President of The Detroit Bank and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Jewel R. Mardian*  
Notary Public

(NOTARIAL SEAL)

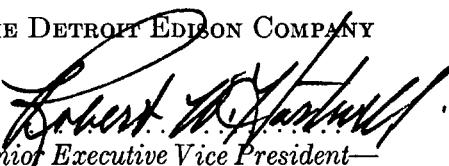
My Commission Expires *January 17, 1976*

## ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of December 15, 1974.

THE DETROIT EDISON COMPANY

By

  
*Senior Executive Vice President—  
Finance and Corporate Affairs*